

407 - PUBLIC UTILITIES COMMISSION

CHAPTER 291 Standards for Billing, Credit and Collection, and Customer Information for Non-Eligible Telecommunications Carriers.

SUMMARY: This Chapter establishes consumer protections for the provision of local exchange telephone service by non-eligible telecommunications carriers in Maine. These rules govern interruptions in service, the granting and denying of service, provision of consumer information, credit and deposit practices, billing, disconnection, customer complaint procedures and methods of obtaining exemptions and variations from this Chapter.

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§ 1 PURPOSES

The purposes of this Chapter are to:

A. Inform consumers. Ensure that customers and applicants are provided adequate and timely information about telecommunications services offered by non-eligible telecommunications carriers (non-ETCs) as defined in section 2(S) of this Chapter.

B. Prevent discrimination; ensure reasonable access to service. Ensure that all customers and applicants for non-ETC services are treated in a nondiscriminatory manner and are not unreasonably denied or disconnected from telecommunications service.

C. Establish minimum consumer protection standards. Establish minimum consumer protection standards that non-ETC's must meet. A non-ETC may provide greater levels of consumer protection than those established in this Chapter.

§ 2 DEFINITIONS

A. Account balance. "Account balance" is the total amount owed by a customer that has been billed in accordance with this Chapter.

B. Advance billing. "Advance billing" is a requirement that a customer prepay charges for services that will be provided during a specific, identifiable period in the future. Advance billing does not include any funds retained as a security deposit.

C. Amount overdue. "Amount overdue" is the amount that a non-ETC has billed to a customer and that has not been paid by the due date of the bill or by a date otherwise agreed upon.

D. Applicant. "Applicant" is any person who applies for a basic, toll, or optional services and who is not a customer of the non-ETC.

E. Basic service. "Basic service" is single-party service, voice grade access to the public switched telephone network, Dual Tone Multi-frequency or its functional digital equivalent, access to emergency services, access to operator services, access to interexchange service, access to directory assistance, and access to toll limitation. Basic service also includes all basic service attributes and standards mandated by federal and state statutes and Commission Rules.

F. Basic service provider. "Basic service provider" is any non-ETC that provides basic service to its customers.

G. Bill. "Bill" is a written statement (printed or electronic) from a non-ETC to a customer that states the amount owed by the customer for the current billing period, the amount overdue, the account balance, late fees and any other charges owed by the customer.

H. Billed Account. "Billed account" is an account that is assigned a unique identification number by the non-ETC for tracking purposes.

I. Clear and Conspicuous. "Clear and conspicuous" is that which would be readily apparent to the average customer.

J. Commission. "Commission" is the Maine Public Utilities Commission.

K. Consumer Assistance Division. "Consumer Assistance Division" is the Consumer Assistance Division of the Maine Public Utilities Commission.

L. Customer. "Customer" is a person who has applied for, been accepted and is receiving basic service, intrastate interexchange telecommunications service, interstate telecommunications service, or optional service in this State or has agreed to be billed for the same.

M. Deposit. "Deposit" is any funds, however designated, that are held as security for future payment or performance.

N. Dispute. "Dispute" is a grievance of an applicant or customer regarding a non-ETC's provision of service, application of Title 35-A, or any Commission rule.

O. Due date. "Due date" is the date by which payment must be received and after which the account is considered overdue.

P. Eligible Telecommunications Carrier (ETC). "Eligible telecommunications carrier" is a basic service provider designated by the Commission as an eligible telecommunications carrier for purposes of section 254 of the Telecommunications Act of 1996, 47 U.S.C., § 151 *et seq.*

Q. Lifeline/Link-up. "Lifeline/Link-Up" is a program that provides financial assistance to qualifying low-income customers to obtain and receive basic service pursuant to Chapter 294 of the Commission's rules.

R. New Service Provider. "New service provider" is a service provider that did not bill the customer for service during the service provider's last billing cycle. This definition excludes service providers who bill the customer solely on a per transaction basis.

S. Non-Eligible Telecommunications carrier (non-ETC). "Non-eligible telecommunications carrier" is any entity providing basic service, toll service or optional

service to the public who is not designated by the Commission as an eligible telecommunications carrier pursuant to section 254 of the Telecommunications Act of 1996, 47 U.S.C., § 151 *et seq.*

T. Payment arrangement. "Payment arrangement" is an agreement between an applicant or customer and a non-ETC that allows the applicant or customer to pay an account balance or deposit in installments.

U. Residential service. "Residential service" is telecommunications service that is provided to a residence and used primarily for domestic purposes.

V. Service provider. "Service provider" is any entity that offers a product or service to a customer, the charge for which appears on the bill of the non-ETC.

W. Toll service. "Toll service" is intrastate or interstate interexchange telecommunications service.

X. Toll service provider. "Toll service provider" is any non-ETC that provides toll service to its customers.

§ 3 JURISDICTION

This Chapter applies to all basic service providers that are not designated by the Commission as an eligible telecommunications carrier for purposes of section 254 of the Telecommunications Act of 1996.

§ 4 EMERGENCY MORATORIUM

When the Commission or the Director of the Consumer Assistance Division determines that, due to an emergency, termination of telecommunications service by one or more non-ETCs would present a clear danger to the health or safety of customers, the Commission or the Consumer Assistance Division Director may declare a partial or complete moratorium on the termination or disconnection of telecommunications service by any or all non-ETCs.

§ 5 NON-DISCRIMINATION

A non-ETC shall provide service and apply credit and collections policies to applicants and customers without discrimination on the basis of race, color, ancestry, sex, age, national origin, religion, marital status, receipt of public assistance or the exercise of rights under state or federal consumer protection laws.

§ 6 UNFAIR OR DECEPTIVE PRACTICES

A. Deceptive names prohibited. A non-ETC may not use a company name that is deceptive or unreasonably confusing to consumers.

B. Application of Maine Unfair Trade Practices Act. A non-ETC shall not engage in conduct prohibited by the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 205-A-214 and related consumer protection statutes.

§ 7 CUSTOMER PRIVACY

A non-ETC shall comply with the Federal Communication Commission's Customer Proprietary Network Information Rules, 47 CFR §§ 64.2001-2009.

§ 8 APPLICATION FOR SERVICE

Before accepting any application for basic service, a non-ETC shall inform the applicant:

A. Disconnection for any reason. That it may disconnect a residential customer for any reason with 14-days notice and may disconnect a nonresidential customer for any reason with 7-days notice. If the non-ETC charges a termination fee, it must disclose the existence and amount of the fee;

B. Local calling area. Of the geographic area that will be included within the applicant's local calling area;

C. Pre-subscribed toll service and access to toll providers. Whether pre-subscribed toll service will be available and of any limitation regarding access to toll providers;

D. Billing information. Of the billing period for basic service and any requirement for advance billing; and

E. Lowest rate service plan. Of the lowest rate basic service plan available to that applicant or customer if requested.

§ 9 CONFIRMATION OF ORDER WITH WRITTEN TERMS AND CONDITIONS

A non-ETC shall provide customers with written confirmation of orders generated by outbound sales calls. The written confirmation must include the specific terms and conditions for each service ordered by the customer and must be provided no later than the time the customer receives the first bill for service. The written confirmation may be included with the first bill for services. Orders for services generated by inbound calls from customers do not require written confirmation.

A. Services and fees.

1. Price, fees and terms and conditions. The written confirmation shall disclose each service or package of services ordered by the customer with its separate price, late fees, fees for installation, disconnection, termination or cancellation,

registration fees, and any other terms and conditions to which the customer is required to adhere.

2. Disputes. The written confirmation shall include instructions on how to dispute charges with the non-ETC.

3. Price of service. The written confirmation shall include all relevant information necessary for the customer to calculate the full price of service.

B. Customer option to cancel order. Upon receipt of a written confirmation, a customer may, for any reason, cancel the order without penalty or further obligation. The customer shall pay or formally dispute any charges incurred prior to canceling the service.

C. Electronic confirmation. In situations where a non-ETC solicits a service electronically, e.g. using the Internet, the written confirmation may also be provided by similar electronic means.

D. Written contracts for services. To the extent that the requirements of this section are consistent with the information contained in a written contract for services between the non-ETC and the customer, the written contract can serve as the written notice required by this section. Written confirmation of an order is required, however, in situations where the written contract does not address each of the requirements of subsection A above. In such situations, the written notice may include only the requirements not included in the written contract.

§ 10 NOTIFICATION OF PRICE INCREASES AND CHANGES IN TERMS AND CONDITIONS

A. Twenty-five day notice required. A non-ETC must provide each of its customers at least 25 days written notice of any price increase or any change in the terms and conditions for any service provided by the non-ETC before the increase or change may take effect. A customer may terminate the service without penalty at any time before the increase or change takes effect.

B. Adequate written notice. Written notice to customers of a rate increase or change in terms and conditions that will result in a rate increase provided in accordance with this section shall:

1. Form. Be in the form of a letter, a message on the bill, or a bill insert that contains only the notification language required by this section;

2. Readable and clear. Be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language;

3. Not included with promotional material. Be sent or provided independently of any advertising or promotional material of any kind;

4. Content of notice. Notify the customer of the amount of the increase and the date the increase will take effect; and

5. Right to cancel. Notify the customer of the customer's right to cancel the service for which the rate increase or change in terms and conditions that will result in a rate increase applies prior to the increase or change taking effect.

C. Failure to provide adequate written notice. A customer who is not supplied with adequate written notice in accordance with this section is not obligated to pay for any increase in the bill attributable to an increase in price or change in terms and conditions.

D. Customer refund. A non-ETC shall refund or credit any increase in the customer's payments attributable to an increase in price or change in terms and conditions if the non-ETC fails to provide adequate written notice in accordance with this section.

E. Notice of Customer Rights. A non-ETC shall provide notice to its customers of the requirement for notification of price increases, as well as the customer's right to not pay the increases and to be reimbursed for payments that are attributable to an increase in price or change in terms and conditions where the customer was not properly notified. The notice shall be:

1. Form. In the form of a letter or bill insert and printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language;

2. Separate document. A separate document containing only the notification language required by this subsection;

3. New customer. Provided to each new customer at the time the customer accepts services; and

4. Annual notice. Provided to each existing customer on an annual basis.

F. Exception. This section does not apply to an increase or change in terms and conditions associated with an individual customer contract or promotional offering, provided the customer was notified before entering the contract or accepting the offer that the price or terms and conditions were subject to change.

§ 11 BILLING AND PAYMENT STANDARDS

A. Bill content. Each bill issued by a non-ETC shall:

1. Identification of non-ETC. Include a clear and conspicuous identification of the certificated non-ETC providing the customer's basic service. If the non-ETC has more than one name, the name appearing on the bill must be the name used to market the service;
2. Date. Identify the date that the bill is issued;
3. Balance. Identify the balance in each billed account at the beginning of the current billing cycle, using a term such as "previous balance;"
4. Charges debited for current billing cycle. Identify the amount of the charges debited to each billed account during the current billing cycle, using a term such as "current service;"
5. Payments made. Identify the amount of payments made to each billed account from the previous billing cycle, using a term such as "payments."
6. Charges debited for past charges. Identify the amount of the charges debited to each billed account during the current billing cycle for untimely payment of past charges, using a term such as "late charge;"
7. Closing dates and balance. Include the closing dates of the current billing cycle and the outstanding balance in each billed account on that date, specifying the "current amount due" and the "past due;"
8. Class of service. Identify the applicable class of service as stated in the non-ETC's rate schedule;
9. Due date. Include the statement, or payment, due date;
10. Receipt deadline. Include the date by which payment of the new balance must be received to avoid assessment of a late charge;
11. Interest rate. Identify the effective monthly interest rate that will be imposed if the bill is not paid by the due date;
12. Contact information. Clearly and conspicuously disclose any information that the subscriber may need to make inquiries about, or contest, charges on the bill; and
13. Toll-free number. Include the toll-free phone number(s) for customer service representatives of the non-ETC and any other service provider to

which charges are due, and to which customer questions or disputes concerning bills or services should be directed.

B. Compliance with federal "Truth-in-Billing" rules. A non-ETC shall comply with the Federal Communication Commission's "Truth-in-Billing" Rules, 47 CFR §§ 64.2400-2401.

C. Billing errors. A non-ETC shall promptly notify a customer of a billing error after it discovers or is notified of the error. The non-ETC shall correct the error within 45 days of discovery or notice. The non-ETC shall investigate the possibility that a billing error may affect multiple customers and shall immediately notify the Consumer Assistance Division if more than 10 customers in the State are affected by a billing error.

1. Make-up bills. A non-ETC may issue a corrected bill for previously unbilled service, or for service billed below the correct rate, that was provided in the previous 12 months. A non-ETC may agree to a settlement that abates all or a portion of the previously unbilled service.

2. Refunds. A non-ETC shall refund any charge billed in excess of correct rates within the previous 6 years from the date of discovery or notice.

D. Late payment fees. A non-ETC may charge a fee for the late payment of basic service charges in accordance with a rate schedule consistent with Chapter 870 of the Commission's Rules.

§ 12 DISCONNECTION WITHOUT CAUSE

A. Disconnection. A non-ETC may disconnect a customer's basic service for any reason not in violation of sections 4, 5, and 13 upon 14 days prior notice to residential customers and 7 days prior notice to nonresidential customers.

B. Content of disconnection notice. Each notice shall be in writing and conspicuously:

1. Disconnection date. Identify the disconnection date;
2. Curability of disconnection. Indicate whether the disconnection may be cured and if so, how;
3. Medical emergency. Include a statement of a residential customer's right to postpone disconnection of basic service for a medical emergency and a description of how to declare a medical emergency under section 13 below; and
4. Right to apply for service; contact information. Include a statement of a customer's right to apply for service from an ETC and direct the customer to the

current address and phone number of the Consumer Assistance Division of the Public Utilities Commission, as well the Commission's website, for a list of ETCs.

C. Bundled service disconnection notice. A non-ETC that provides both basic service and intrastate toll service to a customer may include a notice for the disconnection of both services on the same notice provided that the notice complies with the requirements of this Chapter and provides a single date for disconnection of both services.

D. Disconnection where advance payment is made. If a non-ETC acting under this section disconnects the basic service of a customer who has paid basic service charges in advance, the non-ETC shall refund the balance of any prepaid basic service charges.

§ 13 MEDICAL EMERGENCY

A. Service required during a medical emergency. A non-ETC may not disconnect basic service to a residential customer when the customer or an occupant of the customer's residence is certified by a physician to have a medical condition such that a lack of basic service would pose a serious risk of harm to that individual. In situations where the household has multiple telephone lines, basic service may be disconnected pursuant to section 12 of this rule, provided that basic service continues in at least one telephone line.

B. Disconnection postponed pending certification. If the customer or member of the household notifies the non-ETC that a medical emergency exists and that certification will be obtained, the non-ETC may not disconnect basic service for at least 3 business days. If the certification is not provided within the 3-day period, the non-ETC may subsequently disconnect the customer's service or it may transfer the customer to an ETC in accordance with this section.

C. Certification procedure. A physician's certification of a medical emergency may be oral or written. For purposes of this section, a "physician" is any person licensed by Maine Board of Licensure in Medicine, his or her agent, or any Maine-licensed mental health counselor. The non-ETC may require written confirmation within 7 days of an oral certification.

D. Non-ETC may transfer customer to ETC. If a physician has certified that a medical emergency exists, a non-ETC may transfer the customer's basic service to an ETC. The non-ETC shall waive any charges associated with the transfer and shall pay the ETC its non-recurring service installation costs for the transferred customer. The non-ETC shall also notify the customer when the transfer is complete.

E. Length of service; renewals. A non-ETC may not disconnect the customer for the time period specified in the certification or 60 days, whichever is less.

A certification may be renewed for additional periods of up to 60 days each as long as the medical emergency continues.

§ 14 DISPUTE RESOLUTION PROCEDURES

A. Toll-free line. A non-ETC shall have a toll-free number for customers to call to resolve billing or service disputes.

B. Employees available. A non-ETC shall have an adequate number of properly trained employees available during business hours to respond to questions from applicants and customers, resolve disputes, and address requests for service. Customers calling the toll-free number discussed in subsection A above must be provided the opportunity to talk to a live customer representative without spending an unreasonable amount of time on hold and without being forced to navigate through an unreasonable number of menu levels in an automated phone answer system.

C. Dispute resolution process. When a non-ETC becomes aware of a dispute by an applicant or customer, whether or not disconnection is pending, the non-ETC shall:

1. Investigate dispute. Investigate the dispute, preserving a record of the substance and results of the investigation;

2. Report results. Report the results of its investigation to the applicant or customer based on the record; and

3. Attempt to resolve dispute. Attempt in good faith to resolve the dispute.

D. Notification of right to file a complaint with the Consumer Assistance Division. If a non-ETC cannot resolve the dispute with the applicant or customer after the procedures set forth above have been completed, the non-ETC shall orally inform the applicant or customer of the right to file a complaint with the Consumer Assistance Division and of the toll-free telephone number of the Commission.

E. CAD complaint process

1. Consumer Assistance Division acceptance of a complaint. The Consumer Assistance Division may reject, without investigation, a complaint that is outside its jurisdiction or is without merit. A complaint may be considered to be "without merit" if, among other things, the Consumer Assistance Division has previously issued a decision regarding the same issue that is the basis for the complaint. The customer may appeal the rejection of a complaint to the Commission. If the Consumer Assistance Division accepts a complaint, the Consumer Assistance Division shall investigate the complaint.

2. Consumer Assistance Division investigation of a complaint. The Consumer Assistance Division will inform a non-ETC in writing, by telephone, by e-mail, by fax, or by any other means that is acceptable to both the Consumer Assistance Division and the non-ETC, that a complaint has been filed and the date of the filing. The Consumer Assistance Division will conduct an informal investigation of the dispute that may include:

- a. an informal meeting with the customer and/or a non-ETC representative;
- b. a review of the written record of the non-ETC's investigation required by subsection C above; and
- c. an examination of other records, such as billing and payment information, notice of disconnection, or any other information that the Consumer Assistance Division deems relevant to the dispute.

3. Provision of information to the Consumer Assistance Division by a non-ETC. A non-ETC shall provide information requested by the Consumer Assistance Division within 10 business days of its receipt of the request. This information may include, but is not limited to, billing and payment information, notice of disconnection information, the written record of the utility's investigation of the customer's dispute required by subsection C above, or any other information in the non-ETC's possession or that is readily available to the non-ETC that the Consumer Assistance Division deems necessary to investigate the customer's dispute. If the non-ETC cannot provide the requested information within the 10-day time period, it may request an extension from the Director of the Consumer Assistance Division or his designee. The extension request may be made orally or in writing and it may be granted or denied orally or in writing.

4. Decision. The Consumer Assistance Division shall complete its investigation and issue an oral or written decision as soon as practicable. The decision by the Consumer Assistance Division shall impose any just and reasonable requirements necessary to resolve the dispute.

5. Notice of appeal rights. When a decision is rendered, the Consumer Assistance Division shall inform the customer and the non-ETC of the right to appeal the Consumer Assistance Division's decision to the Commission and of the rights of both parties while an appeal to the Commission is pending.

F. Appeal to the Commission

1. Appeal process. The customer or the non-ETC may appeal a Consumer Assistance Division decision to the Commission by filing a notice of appeal with the Administrative Director of the Commission within 10 calendar days after the date of the decision. Notwithstanding section 6(D) of the Maine Rules of Civil

Procedure and section 305 of the Commission's Rules of Practice and Procedure (Chapter 110), no additional time is allowed for mailing.

2. Commission review. The Commission shall review the decision to determine if it complies with applicable statutory and regulatory requirements, is based on sound facts, and does not represent an abuse of discretion by the Consumer Assistance Division.

3. Order. The Commission shall issue an order affirming the Consumer Assistance Division's decision or, if the decision is not affirmed, the Commission shall:

- a. remand the complaint to the Consumer Assistance Division for reconsideration with an explanation of the basis for the remand;
- b. remand the complaint back to CAD to gather further facts; or
- c. issue an order reversing or altering the Consumer Assistance Division's decision.

§ 15 WAIVER

A. General waiver. Upon the request of any person subject to this Chapter or upon its own motion, the Commission may, for good cause, waive any requirement of this Chapter that is not required by statute. The waiver may not be inconsistent with the purposes of this Chapter or Title 35-A. The Commission, the Director of the Consumer Assistance Division, or the Hearing Examiner assigned to a proceeding related to this Chapter may grant the waiver.

B. Individual customer exemption

1. Request requirements. A non-ETC may request that the Consumer Assistance Division grant an exemption from any provision of this Chapter in any case involving an individual applicant or customer whose conduct and known financial condition pose a clear danger of substantial losses to the non-ETC. A request for exemption under this subsection must be made to the Consumer Assistance Division. The request may be written or oral, but an oral request must be followed promptly by a written confirmation. The written request or confirmation must include a detailed statement of the facts alleged by the non-ETC in support of the request. The non-ETC shall immediately notify, in writing, the individual applicant or customer whose service would be affected by the proposed exemption, describing the nature and effect of the exemption requested and the facts alleged in support of the request.

2. Consumer Assistance Division investigation. The Consumer Assistance Division may reject, without investigation, any request that does not present

facts that satisfy the standard of subsection 1 above. Before granting any exemption, the Consumer Assistance Division shall informally investigate the matter.

3. Decision. When the Consumer Assistance Division completes its investigation or summarily rejects the request, it shall issue a decision granting, denying, or granting in part the requested exemption. When the Consumer Assistance Division determines that an exemption is required to avoid a clear danger of substantial losses to the non-ETC, it shall notify the customer and the non-ETC of the decision. The notification may be made orally, but the Consumer Assistance Division shall promptly issue a written confirmation of the decision. The decision or written confirmation shall:

- a. describe the nature and effect of the exemption;
- b. explain why the exemption was granted or denied; and
- c. inform the customer and the non-ETC of the right to appeal the Consumer Assistance Division's decision to the Commission, as provided in subsection 4 below.

4. Appeal to Commission. By following the procedures in section 14(F), a party may appeal a decision by the Consumer Assistance Division granting or denying, in whole or in part, a request for an exemption. If the Consumer Assistance Division grants an exemption, the non-ETC may not act on the exemption until the appeal period expires.

BASIS STATEMENT: The factual and policy basis for this rule is set forth in the Commission's Statement of Factual and Policy Basis and Order Adopting Rule, Commission Docket No. 2000-43 issued on February 2, 2001. Copies of this Statement and Order have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

AUTHORITY: 35-A M.R.S.A. §§ 104, 111, 704, and 705.

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on June 25, 2002. It was filed with the Secretary of State on June 25, 2002 and will be effective on June 30, 2002.